

FORECLOSURE OF RESIDENTIAL RENTAL PROPERTY

2016 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill enacts and amends provisions related to foreclosure of residential rental property.

Highlighted Provisions:

This bill:

- ▶ under certain circumstances, allows a preexisting tenant to continue to occupy, for a limited amount of time, a residential rental property after a forced sale at public auction;
- ▶ repeals a sunset provision; and
- ▶ eliminates a sunset repeal date.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

57-1-25, as last amended by Laws of Utah 2011, Chapter 228

63I-1-257, as last amended by Laws of Utah 2015, Chapter 233

78B-6-802, as last amended by Laws of Utah 2010, Chapter 66

78B-6-901.5, as enacted by Laws of Utah 2010, Chapter 66

ENACTS:

57-1-25.5, Utah Code Annotated 1953

78B-6-802.7, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **57-1-25** is amended to read:

57-1-25. Notice of trustee's sale -- Description of property -- Time and place of

33 **sale.**

34 (1) The trustee shall give written notice of the time and place of sale particularly
35 describing the property to be sold:

36 (a) by publication of the notice:

37 (i) (A) at least three times;

38 (B) at least once a week for three consecutive weeks;

39 (C) the last publication to be at least 10 days but not more than 30 days before the date
40 the sale is scheduled; and

41 (D) in a newspaper having a general circulation in each county in which the property to
42 be sold, or some part of the property to be sold, is situated; and

43 (ii) in accordance with Section 45-1-101 for 30 days before the date the sale is
44 scheduled;

45 (b) by posting the notice:

46 (i) at least 20 days before the date the sale is scheduled; and

47 (ii) (A) in some conspicuous place on the property to be sold; and

48 (B) at the office of the county recorder of each county in which the trust property, or
49 some part of it, is located; and

50 (c) if the stated purpose of the obligation for which the trust deed was given as security
51 is to finance residential rental property:

52 (i) by posting the notice, including the statement required under Subsection (3)(b):

53 (A) on the primary door of each dwelling unit on the property to be sold, if the property
54 to be sold has fewer than nine dwelling units; or

55 (B) in at least two conspicuous places on the property to be sold, in addition to the
56 posting required under Subsection (1)(b)(ii)(A), if the property to be sold has nine or more
57 dwelling units; or

58 (ii) by mailing the notice, including the statement required under Subsection (3)(b), to
59 the occupant of each dwelling unit on the property to be sold.

60 (2) (a) The sale shall be held at the time and place designated in the notice of sale.

61 (b) The time of sale shall be between the hours of 8 a.m. and 5 p.m.

62 (c) The place of sale shall be clearly identified in the notice of sale under Subsection

63 (1) and shall be at a courthouse serving the county in which the property to be sold, or some

64 part of the property to be sold, is located.

65 (3) (a) The notice of sale shall be in substantially the following form:

66 Notice of Trustee's Sale

67 The following described property will be sold at public auction to the highest bidder,
68 payable in lawful money of the United States at the time of sale, at (insert location of sale)
69 _____ on _____ (month\day\year), at ____m. of said day, for the purpose of
70 foreclosing a trust deed originally executed by ____ (and ____, his wife,) as trustors, in favor
71 of ____, covering real property located at ____, and more particularly described as:

72 (Insert legal description)

73 The current beneficiary of the trust deed is _____ and the record
74 owners of the property as of the recording of the notice of default are _____ and
75 _____.

76 Dated _____ (month\day\year).

77 _____ Trustee

78 (b) If the stated purpose of the obligation for which the trust deed was given as security
79 is to finance residential rental property, the notice required under Subsection (1)(c) shall
80 include a statement, in at least 14-point font, substantially as follows:

81 "Notice to Tenant

82 As stated in the accompanying Notice of Trustee's Sale, this property is scheduled to be
83 sold at public auction to the highest bidder unless the default in the obligation secured by this
84 property is cured. If the property is sold, you may be allowed under ~~[federal law]~~ Utah Code
85 Section 57-1-25.5 to continue to occupy your rental unit until your rental agreement expires, or
86 until 90 days after the date you are served with a notice to vacate, whichever is later. If your
87 rental or lease agreement expires after the 90-day period, you may need to provide a copy of
88 your rental or lease agreement to the new owner to prove your right to remain on the property
89 longer than 90 days after the sale of the property.

90 You must continue to pay your rent and comply with other requirements of your rental
91 or lease agreement or you will be subject to eviction for violating your rental or lease
92 agreement.

93 The new owner or the new owner's representative will probably contact you after the
94 property is sold with directions about where to pay rent.

The new owner of the property may or may not want to offer to enter into a new rental or lease agreement with you at the expiration of the period described above."

(4) The failure to provide notice as required under Subsections (1)(c) and (3)(b) or a defect in that notice may not be the basis for challenging or invalidating a trustee's sale.

(5) A trustee qualified under Subsection 57-1-21(1)(a)(i) or (iv) who exercises a power of sale has a duty to the trustor not to defraud, or conspire or scheme to defraud, the trustor.

Section 2. Section **57-1-25.5** is enacted to read:

57-1-25.5. Foreclosure of residential rental property -- Effect on tenancy.

(1) As used in this section:

(a) "Bona fide residential rental agreement" means an agreement, for a property secured by a trust deed:

(i) that was the result of an arm's-length transaction;

(ii) established before:

(A) the trustee records a notice of default for the property under Section 57-1-24; or

(B) the trustee or beneficiary files an action to foreclose the trust property under Title 78B, Chapter 6, Part 9, Mortgage Foreclosure;

(iii) that provides an individual the right to exclusive use and occupancy of the residential property:

(A) on an at-will basis; or

(B) for a period specified by the agreement; and

(iii) that requires the individual to pay rent in an amount that:

(A) is not substantially less than fair market rent for the property; or

(B) is less than fair market rent due to a federal, state, or local subsidy;

(b) "Bona fide tenant" means an individual that:

(i) has the right to occupy a residential property under a bona fide residential rental agreement;

(ii) is not the trustor, and

(iii) is not the trustor's child, spouse, or parent.

(c) "Foreclosed rental property" means a property that:

(i) is the subject of a bona fide residential rental agreement; and

(ii) (A) is the subject of a trustee's sale as provided in this chapter; or

(B) is foreclosed under Title 78B, Chapter 6, Part 9, Mortgage Foreclosure.

(d) "New owner" means the immediate successor in interest of a foreclosed rental property following a foreclosure or trustee's sale of the property.

(2) (a) Except as provided in Subsection (2)(b), a new owner assumes ownership of a foreclosed rental property subject to a bona fide tenant's right to occupy the foreclosed rental property:

(i) according to the terms of a bona fide residential rental agreement; and

(ii) until the end of the term of the bona fide residential rental agreement.

(b) Subject to Subsection (3), a new owner who intends to occupy a foreclosed rental property as the new owner's primary residence may terminate:

(i) the bona fide residential rental agreement; and

(ii) the bona fide tenant's occupancy of the foreclosed rental property.

(3) (a) A new owner who terminates a bona fide tenant's occupancy of a foreclosed rental property shall serve, to the bona fide tenant, a notice to vacate:

(i) at least 90 days before the day on which the new owner requires the bona fide tenant to vacate the foreclosed rental property; and

(ii) as provided in Section 57-1-25.

(b) A notice to vacate under Subsection (3)(a) shall:

(i) be in at least 14-point font;

(ii) state the new owner's name, address, and contact information;

(iii) explain the reason the new owner requires the bona fide tenant to vacate the rental property;

(iv) state the date on which the bona fide tenant is required to vacate the rental property; and

(v) refer to this section as the law under which the notice to vacate is provided.

(4) This section does not modify the requirements for termination of a federally subsidized tenancy.

Section 3. Section **63I-1-257** is amended to read:

63I-1-257. Repeal dates, Title 57.

~~[(1) Subsections 57-1-25(1)(c), (3)(b), and (4) are repealed December 31, 2016.]~~

~~[(2)]~~ (1) Subsection 57-16-4(12), on July 1, 2017, is modified to read as follows:

"(12) The mobile home park shall have a copy of this chapter posted at all times in a conspicuous place in a common area of the mobile home park."

~~[(3)]~~ (2) Title 57, Chapter 16a, Mobile Home Park Helpline, is repealed July 1, 2017.

Section 4. Section **78B-6-802** is amended to read:

78B-6-802. Unlawful detainer by tenant for a term less than life.

(1) A tenant holding real property for a term less than life, is guilty of an unlawful detainer if the tenant:

(a) except as provided in Subsection (1)(i), continues in possession, in person or by subtenant, of the property or any part of it, after the expiration of the specified term or period for which it is let to him, which specified term or period, whether established by express or implied contract, or whether written or parol, shall be terminated without notice at the expiration of the specified term or period;

(b) having leased real property for an indefinite time with monthly or other periodic rent reserved and except as provided in Subsection (1)(i):

(i) continues in possession of it in person or by subtenant after the end of any month or period, in cases where the owner, the owner's designated agent, or any successor in estate of the owner, 15 calendar days or more prior to the end of that month or period, has served notice requiring the tenant to quit the premises at the expiration of that month or period; or

(ii) in cases of tenancies at will, remains in possession of the premises after the expiration of a notice of not less than five calendar days;

(c) continues in possession, in person or by subtenant, after default in the payment of any rent or other amounts due and after a notice in writing requiring in the alternative the payment of the rent and other amounts due or the surrender of the detained premises, has remained uncomplied with for a period of three calendar days after service, which notice may be served at any time after the rent becomes due;

(d) assigns or sublets the leased premises contrary to the covenants of the lease, or commits or permits waste on the premises after service of a three calendar days' notice to quit;

(e) sets up or carries on any unlawful business on or in the premises after service of a three calendar days' notice to quit;

(f) suffers, permits, or maintains on or about the premises any nuisance, including nuisance as defined in Section 78B-6-1107 after service of a three calendar days' notice to quit;

(g) commits a criminal act on the premises and remains in possession after service of a three calendar days' notice to quit;

(h) continues in possession, in person or by subtenant, after a neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, other than those previously mentioned, and after notice in writing requiring in the alternative the performance of the conditions or covenant or the surrender of the property, served upon the tenant and upon any subtenant in actual occupation of the premises remains uncomplied with for three calendar days after service; or

(i) (i) is a bona fide tenant [~~under a bona fide tenancy as provided in Section 702 of the Protecting Tenants at Foreclosure Act of 2009, Pub. L. 111-22~~] of a foreclosed rental property, as defined in Section 57-1-25.5 or Section 78B-6-802.7; and

(ii) continues in possession after the effective date of a notice to vacate given in accordance with [~~Section 702 of the Protecting Tenants at Foreclosure Act of 2009, Pub. L. 111-22~~] Subsection 57-1-25.5(3) or Subsection 78B-6-802.7(3).

(2) Within three calendar days after the service of the notice, the tenant, any subtenant in actual occupation of the premises, any mortgagee of the term, or other person interested in its continuance may perform the condition or covenant and thereby save the lease from forfeiture, except that if the covenants and conditions of the lease violated by the lessee cannot afterwards be performed, or the violation cannot be brought into compliance, the notice provided for in Subsections (1)(d) through (g) may be given.

(3) Unlawful detainer by an owner resident of a mobile home is determined under Title 57, Chapter 16, Mobile Home Park Residency Act.

(4) The notice provisions for nuisance in Subsections (1)(d) through (g) do not apply to nuisance actions provided in Sections 78B-6-1107 through 78B-6-1114.

Section 5. Section **78B-6-802.7** is enacted to read:

78B-6-802.7. Foreclosure of residential rental property -- Effect on tenancy.

(1) As used in this section:

(a) "Bona fide residential rental agreement" means an agreement, for a property secured by a mortgage:

(i) that was the result of an arm's-length transaction;

(ii) established before the filing of an action to foreclose the mortgage under Part 9,

219 Mortgage Foreclosure;

220 (iii) that provides an individual the right to exclusive use and occupancy of the
221 residential property;

222 (A) on an at-will basis; or

223 (B) for a period specified by the agreement; and

224 (iii) that requires the individual to pay rent in an amount that:

225 (A) is not substantially less than fair market rent for the property; or

226 (B) is less than fair market rent due to a federal, state, or local subsidy;

227 (b) "Bona fide tenant" means an individual that:

228 (i) has the right to occupy a residential property under a bona fide residential rental
229 agreement;

230 (ii) is not the mortgagor, and

231 (iii) is not the mortgagor's child, spouse, or parent.

232 (c) "Foreclosed rental property" means a property that:

233 (i) is the subject of a bona fide residential rental agreement; and

234 (ii) is foreclosed under Part 9, mortgage foreclosure.

235 (d) "New owner" means the immediate successor in interest of a foreclosed rental
236 property following foreclosure of the property.

237 (2) (a) Except as provided in Subsection (2)(b), a new owner assumes ownership of a
238 foreclosed rental property subject to a bona fide tenant's right to occupy the foreclosed rental
239 property:

240 (i) according to the terms of a bona fide residential rental agreement; and

241 (ii) until the end of the term of the bona fide residential rental agreement.

242 (b) Subject to Subsection (3), a new owner who intends to occupy a foreclosed rental
243 property as the new owner's primary residence may terminate:

244 (i) the bona fide residential rental agreement; and

245 (ii) the bona fide tenant's occupancy of the foreclosed rental property.

246 (3) (a) A new owner who terminates a bona fide tenant's occupancy of a foreclosed
247 rental property shall serve, to the bona fide tenant, a notice to vacate:

248 (i) at least 90 days before the day on which the new owner requires the bona fide tenant
249 to vacate the foreclosed rental property; and

250 (ii) as provided in Section 78B-6-805e.

251 (b) A notice to vacate under Subsection (3)(a) shall:

252 (i) be in at least 14-point font;

253 (ii) state the new owner's name, address, and contact information;

254 (iii) explain the reason the new owner requires the bona fide tenant to vacate the rental

255 property;

256 (iv) state the date on which the bona fide tenant is required to vacate the rental

257 property; and

258 (v) refer to this section as the law under which the notice to vacate is provided.

259 (4) This section does not modify the requirements for termination of a federally

260 subsidized tenancy.

261 Section 6. Section **78B-6-901.5** is amended to read:

262 **78B-6-901.5. Notice to tenant on residential property to be foreclosed.**

263 (1) As used in this section, "residential rental property" means property on which a

264 mortgage was given to secure an obligation the stated purpose of which is to finance residential

265 rental property.

266 (2) Within 20 days after filing an action under this part to foreclose property that

267 includes or constitutes residential rental property, the plaintiff in the action shall:

268 (a) post a notice:

269 (i) on the primary door of each dwelling unit on the property that is the subject of the

270 foreclosure action, if the property has fewer than nine dwelling units; or

271 (ii) in at least three conspicuous places on the property that is the subject of the

272 foreclosure action, if the property to be sold has nine or more dwelling units; or

273 (b) mail a notice to the occupant of each dwelling unit on the property that is the

274 subject of the foreclosure action.

275 (3) The notice required under Subsection (2) shall:

276 (a) be in at least 14-point font;

277 (b) include the name and address of:

278 (i) the owner of the property;

279 (ii) the trustor or mortgagor, as the case may be, on the instrument creating a security

280 interest in the property;

(iii) the trustee or mortgagee, as the case may be, on the instrument; and

(iv) the beneficiary, if the instrument is a trust deed;

(c) contain the legal description and address of the property; and

(d) include a statement in substantially the following form:

"Notice to Tenant

An action to foreclose the property described in this notice has been filed. If the foreclosure action is pursued to its conclusion, the described property will be sold at public auction to the highest bidder unless the default in the obligation secured by this property is cured.

If the property is sold, you may be allowed under ~~[federal law]~~ Utah Code Section 78B-6-802.7 to continue to occupy your rental unit until your rental agreement expires, or until 90 days after the sale of the property at auction, whichever is later. If your rental or lease agreement expires after the 90-day period, you may need to provide a copy of your rental or lease agreement to the new owner to prove your right to remain on the property longer than 90 days after the sale of the property.

You must continue to pay your rent and comply with other requirements of your rental or lease agreement or you will be subject to eviction for violating your rental or lease agreement.

The new owner or the new owner's representative will probably contact you after the property is sold with directions about where to pay rent.

The new owner of the property may or may not want to offer to enter into a new rental or lease agreement with you at the expiration of the period described above."

(4) The failure to provide notice as required under this section or a defect in that notice may not be the basis for challenging or defending a foreclosure action or for invalidating a sale of the property pursuant to a foreclosure action.